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SUPREME COURT OF THE UNITED STATES.

No. 65.

COLIN MITCHEL ET AL., APPLTS.

VERSUS

THE UNITED STATES.

APPEAL FROM THE SUPERIOR COURT FOR THE MIDDLE DISTRICT OF FLORIDA.

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Langtree & O'Sullivan, Print.

UNITED STATES OF AMERICA.

PLEAS

Before the Honorable Judge of the Superior Court, for the district of Middle Florida, held at the city of Tallahassee, on the 30th day of June, in the year 1838.

Be it remembered, that heretofore, to wit, on the 30th day of January, 1836, the petitioners, Colin Mitchel, John Carnockan, Peter Mitchel, Benjamin W. Rogers, Benjamin Marshall, and John Graham, by their solicitors, White and Baltzell, filed the mandate of the Supreme Court, in a case depending between them and the United States, which is in the following words, to wit:

Decree.

This cause came on to be heard, on the transcript of the record from the superior court for the middle district of Florida, and was argued by counsel; on full consideration whereof, this court is *unanimously* of opinion, that the title of the petitioners to so much of the lands in controversy, as is embraced within the lines and boundaries of the tract granted by the deeds, grants and acts of confirmation to Panton, Leslie & Co., in 1804 and 1806; also to the island in the river Apalachicola, ceded, granted and confirmed to John Forbes & Co., in 1811; also the lands and islands at and west of the mouth of said river, which were ceded, granted and confirmed to John Forbes & Co., in 1811, is valid by the law of nations; the treaty between the United States and Spain, by which the territory of the Floridas were ceded to the former; the laws and ordinances of Spain under whose government the title originated; the proceedings under said treaty and the acts of Congress relating thereto; and do finally order, decree, and determine, and adjudge accordingly. And this court doth in like manner order, adjudge, determine and decree, that the title of the petitioner to so much of the tract of land which lies east of the first mentioned tract between the rivers Wakulla and St. Mark's, which was conveyed to John Forbes & Co., in 1811, as shall not be included in the exception hereinafter made, is valid by the laws, treaty and proceedings as aforesaid; with the exception of so much of the last mentioned tract as includes the fortress of St. Mark's, and the territory directly adjacent and appurtenant thereto, which are hereby reserved for the use of the United States. And it is further ordered and decreed, that the territory thus described, shall be that which was ceded by the Indian proprietors to the Crown of Spain, for the purpose of erecting the said fort, provided the boun-

daries of the said cession can be ascertained. If the boundaries of the said cession cannot be ascertained, then the adjacent lands which were considered and held by the Spanish Government, or the commandant of the post as annexed to the fortress for military purposes, shall be still considered as annexed to it, and reserved with it for the use of the United States. If no evidence can be obtained to designate the extent of the adjacent lands, which were considered as annexed to St. Mark's as aforesaid, then so much land shall be comprehended in this exception as, according to military usage was attached generally to forts in Florida, or the adjacent colonies. If no such military usage can be proved, then it is ordered and decreed, that a line shall be extended from the point of junction between the rivers St. Mark's, and Wakulla, to the middle of the river St. Mark's, below the junction, thence extending up the middle of each river three miles in a direct line, without computing the courses thereof; and that the territory comprehended within a direct line, to be run so as to connect the points of termination on each river, at the end of the said three miles up each river, and the two lines to be run as aforesaid, shall be, and the same are hereby declared to be the territory reserved as adjacent and appurtenant to the fortress of St. Marks, and as such reserved for the use of the United States. To which the claim of the petitioner is rejected; and as to which, this court decree that the same is a part of the public lands of the United States.

The decree of the court below, is therefore reserved and annulled in all matters and things therein contained, with the exception aforesaid; and this court proceeding to render such decree as said court ought to have rendered, do order, adjudge, and decree that the claim of the petitioner is valid, and ought to be confirmed, and is, and remains confirmed by the treaty, laws and proceedings aforesaid, to all the lands embraced therein, except such part as is herein above excepted. And this court does further order, adjudge and decree, that the clerk of this court certify the same to the surveyor general of Florida, pursuant to law, with directions to survey, and lay off the land described in the petition of the claimants, according to the lines, boundaries, and description thereof in the several deeds of cession, grant and confirmation by the Indians, or governor of West Florida, filed as exhibits in this cause, or referred to in the record thereof, excepting, nevertheless, such part of the tract granted in 1811, lying east of the tract granted in 1804, and 1806, as is hereby declared to be the territory of the United States, pursuant to the exception hereinbefore mentioned, and to make return thereof according to law, as to all the lands comprehended in the three first herein mentioned tracts. And as to the tract last herein mentioned, to survey in like manner, lay off the same, so soon as the extent of land herein excepted and reserved for the use of the United States, shall be ascertained in the manner herein before directed.

And this court doth further order, adjudge and direct, that the extent and boundaries of the land thus excepted and reserved, shall be ascertained and determined by the superior court of the middle

district of Florida, in such manner, and by such process as is prescribed by the acts of Congress relating to the claims of lands in Florida, and to render therefor such judgment or decree, as to law shall appertain.

And at another day, to wit, on the 30th day of January, 1836, came the complainants, by their solicitors, and filed the following *bill*, to wit:

Bill.

To the honorable, the judge of the superior court of Middle Florida, in chancery sitting, your orators, Colin Mitchel, John Carnochan, Peter Mitchel, Benjamin W. Rogers, Benj. Marshall, and John Graham, respectfully represent, that at the last term of the Supreme Court of the United States, the title of your petitioners in, and to, a certain tract of land known as "Forbes & Co's. purchase," was confirmed to them, as will more fully appear by the mandate on the record of your honorable court, with the exception therein referred to, in which your honor is directed to take other and further proof. Your orators charge that the Spanish Government purchased only the site of the fort St. Mark's, from the Indians, and the privilege of erecting one upon their lands, as appears by the official reports of 1787, referred to in several places in the record, but they have not been able to find any deed of sale on the records of Louisiana or West Florida. Your orators claim under their *deeds* of sale and confirmation thereof, the lands to the walls of said fortifications, on all sides, first under, and by virtue of the laws of Spain, which nowhere prohibit the grant of lands to the *walls* of a fort or fortification, nor the grant of the site itself, on which it stands, and as no reservation was made in the original deeds and confirmation thereof, your orators are entitled to the lands to walls of said fort, in and by virtue of their deeds and confirmations aforesaid.

Your orators further represent, that in book 3, tit. 7, law 1, of the recapitilacion de las Indias, and in book 4, tit. 7, law 12, the right of holding property to the walls of a fort or fortification, is expressly admitted, and the prohibition is only against the right of erecting buildings prejudicial to defence within the range of cannon shot, so long only as it was used as a fortification. Your orators refer to translation of said laws made at the Department of State, herewith filed and marked A. Your orators also refer to one of the same laws in White's Compilation, p. 36, and to another translated from the laws of Spain, p. 92, in which it is declared that cities, towns and villages, may own "forts." Your orators further represent that West Florida was a dependancy of Louisiana, beloning to the same captain-generalship, and governed by the same laws, and that in every military post, where a fort of any description was erected within the jurisdiction of Louisiana, Illinois, and West Florida, grants were made by the French and Spanish Governments to the walls of the forts, and the only restraint upon the owners, was not to erect build-

ings prejudicial to the defence, or in case of so doing, they were subject to demolition. Your oarators beg leave to refer to the various reports of all the commissioners, in Upper and Lower Louisiana, printed, referred to, and acted on by Congress, to prove that in every case at St. Louis, New Madrid, Baton Rouge, New Orleans, Mobile, Pensacola, and St. Augustine, grants of land were made and confirmed in the immediate vicinity of forts and fortifications.

Your orators further shew, that one of the rules given to courts by the act of Congress, giving jurisdiction to the courts in such cases, is the treaty and "proceedings under the treaty," meaning the acts of commissioners, and laws of Congress giving them confirmation, and they are advised, that this general practice of the Spanish authorities and uniform approval of the American Government, is not only an evidence of the law and practice of Spain, but establishes the title founded upon the well-settled precedents in the proceedings under a treaty, and other treaties referred to in the act aforesaid.

Your orators further shew, that in a certain report of the commissioners of the eastern district of Louisina, upon the claim of John B. Sabátut, herewith filed and marked B, it will appear that various grants and proceedings in reference to grants in the immediate vicinity of the fortification of New orleans, were made, and the subject of judicial controversy, and in *no one* instance, was a question ever varied as to the power of the Spanish Governor, under the Spanish laws to grant to the *walls* of a fort. Your orators further represent, that it will appear by a reference to the printed reports of the commissioners, that, at St. Louis, Baton Rouge, New Orleans, and Mobile, grants were made and confirmed on all sides of each one of the forts in that vicinity.

Your orators further shew, that in the vicinity of Pensacola, within the district of the Governor of West Florida, who ratified the Indian sales to Forbes & Co. there were three forts, one in the rear of Pensacola, contiguous to which three grants have been made, as will appear by the official certificate of the keeper of the public archives, marked C. Your orators further represent, that in the immediate vicinity of Fort San Carlos de Barancas, at the mouth of Pensacola Bay, various grants were made, as appears by certificate D, and confirmed by Congress, and a tract of land granted to Francisco and Fernando Morieno, as appears by certificate E, and the title F, and the plat G, confirmed and purchased by the United States; and the site of the fort on the opposite side was granted by Spain, as will appear by report *ten*, and purchased by the United States.

Your orators further refer to the reports of the commissioners of East Florida, and the certificates herewith filed, to shew that grants were made and confirmed to the walls of the fort of St. Augustine.

Your orators further refer to a report herewith filed and duly certified, from Havana, marked H, to shew the military usages of the provinces founded on the laws before referred to.

Your orators submit, that they have shewn that by the laws, usages, military practices in the various colonies of Spain, sanctioned by our

own Government, that their title is good to the *walls* of fort St. Mark's, and they pray confirmation thereof, to the said walls of the fort as aforesaid, to be held as it was under the dominion of Spain, according to the treaty of cession, and the proceedings under it in other cases, and that the United States be decreed to pay costs accordingly to the provisions of the act of Congress, and your orators will ever pray.

BALTZELL & WHITE,
Solicitors.

And at another day, to wit, on the 14th day of February, 1838, came complainants, and by their solicitor, Thomas Baltzell, filed their amended petition, which is in the words and figures following, to wit.

Amended Petition.

COLIN MITCHELL, and others, *Agt.* THE UNITED STATES. } Supreme Court for Leon County.

And your petitioners, by leave of the court, shew to your Honour, that the land on which the Fort of St. Marks is erected, was originally obtained from the Indians, then in possession and owning the same, for the purpose of the erection of a fortification, to be held, occupied, and used by them as such; that it was procured, whether by purchase or voluntary grant, for that express purpose, and no other. And these petitioners do admit, and have always admitted, the right, power, and authority of the United States, as well as of Spain, to possess, occupy, and use the same now and hereafter, whenever the said land may be needed for such purpose. Whilst they assert the fee to have been, and now to be in themselves, they admit the right of the Government for the purposes of a fort; and that such was the design and intention of the Spanish Government and Indians, when the fort was originally built.

These petitioners assert, that the Government of the United States have abandoned and evacuated the said fort; have never completed its works, which under the Spanish Government were unfinished, but have allowed the same to go to decay; that no garrison is or has been maintained there, and instead of a fortification, the buildings have been used for warehouses and other purposes; that the fort itself has long since been given up to the authorities of Florida and rented out; that the land at and near the fort has been laid out in town lots, under an act of Congress of 2d of March, 1833, and that a portion of said lots were directed to be sold by an act of Congress, approved June 30th, 1834, and that another act, passed subsequently, giving the St. Marks and Tallahassee Railroad Company, ten acres of land at the junction of the St. Marks and Walkulla rivers, which in terms, includes the land appurtenant to said fort.

All which acts, these petitioners allege, constitute a clear, evident,

and unequivocal abandonment, on the part of the United States, of the said land for the purposes of a fort, by reason whereof, the same does and should revert to these petitioners, under the law of Spain, and the laws of this Government. They assert that a similar abandonment was made of a fort on the west side of the Walkulla, a few miles distant from the present fort, within the boundary line of these petitioners, their title to which has never been questioned by any one.

These petitioners, therefore, pray that the fee of the land covered by the fort, as well as that adjoining and appurtenant, be decreed to your petitioners, whilst the use thereof for the purposes of a fort may be reserved, by a decree of this honourable court, to the Government of the United States.

THOMAS BALTZELL,
For Petioners.

And on the same day, to wit, on the said 14th day of February, 1838, Charles S. Sibley, Esqr., United States Attorney for the Middle District of Florida, filed the following answer to petition and amended petition, which is in the words and figures following, to wit:

Answer to Petition and Amended Petition.

To the Honourable Thomas Randall, Judge of the Superior Court of the Middle District of Florida, sitting in Chancery.

The exceptions and answer of Charles S. Sibley, attorney of the United States for said district, to the petition and amended petition of Colin Mitchell, and others, against the United States, sheweth:

That the said petition and amended petition filed as aforesaid, were, and are entirely unnecessary, superflous, and irregular; that the matters to be ascertained and decided by this honourable court, do not arise upon or out of said petition and amended petition in any wise, and that it should be governed or regulated in the investigations to be made in this case thereby; that the power and authority of this honourable court to hold cognisance of this case, after its final decree, on the second day of November, 1830, and to make any further investigations therein, is not in any wise founded upon the filing of said petition, but is entirely, and exclusively derived from, and founded upon the decree of the Supreme Court of the United States, at January term, 1835, by and in which this honourable court are directed to ascertain certain questions of *fact*, and the said petition and amended petition being, therefore, supererogatory, it is not necessary for the said United States of America to finally answer the same, or create any issues of law or fact thereupon.

And the said attorney also shews to the court, that if it had been proper to file said petition and amended petition, the same are composed of allegations of fact and law, suggestions and deductions, references to books, and other matters of multifarious character, so blended together that said petition and amended petition partake

more of the character of a brief of counsel than a legal pleading, and many of said matters therein contained, being altogether irrelevant to the questions pending before this honourable court, a formal plea or answer thereto, by the United States, would serve but to confuse and embarrass the investigation to which the parties should now be confined.

And the said attorney of the United States, if said petition and amended petition should be considered by this honorable court as properly presented, and in proper form, in behalf of said United States, in answer thereto, denies generally the allegations of fact therein made, except so far as the same are hereinafter expressly admitted to be true; and also disputes the alleged rules of law, and the correctness of the arguments and deductions, and other matters therein set forth, except so far as the same may be hereinafter conceded.

And the said attorney further answering, says: that the question to be determined by this honorable court, by the reference and direction of the Supreme Court of the United States, is a simple question of *fact*; that all the points of law in dispute in said case, were settled and determined by the Supreme Court, in their decision, at January term, 1835, and that there is no question of law depending before this court to be decided, nor can any possibly arise in the case, except as to the regularity and legality of the proofs offered to establish the question of fact. This question is the ascertainment of the "extent and boundaries" of the tract of land which "includes the Fortress of St. Marks, and the territory directly and immediately adjacent and appurtenant thereto," which by the said decree was reserved for the use of the United States, and to which the claim of the petitioner was rejected. That in determining this question, this honorable court is to be regulated by four certain alternative rules, prescribed in said decree of the Supreme Court to govern its investigations.

And the said attorney further saith, that the proof to be adduced is of the same character requisite in other cases to establish a fact. If this proof is the testimony of witnesses, it must be on oath, upon legal examination; not taken *exparte*, not mere heresay, and the expression of vague opinions on questions of law and fact mixed, but statements of the knowledge of a fact. If foreign statutes are relied on, copies duly authenticated and proved should be produced; certificates of their effect, and loose citations so uncertain compilations, and references to codes, and books, said to contain them, are not sufficient. The observance of these rules will answer many of the references made in said petition, and exclude much of the documentary evidence filed in said case by petitioners. That all cases of grants adducd before this honorable court, amount only to a bare permission of occupancy, under rigid restrictions, and subject to be divested of possession whenever it was deemed expedient for the public service, or were made in the rear of fortresses, in a direction for which they were not intended for defence, and from which no foe was expected, and in no case under the Spanish laws or usages, recognised in the Spanish Provinces, upon the esplanade of a fortress, or within the extreme range of the largest ordnance.

And the said attorney further saith, that this honorable court has no power to entertain any question, or make any decision as contended in said amended petition as to title to the Fort St. Marks; that matter is *res adjudicatra.* The Supreme Court of the United States, in its decree, expressly exclude from the grant the Fortress of St Marks, and the territory directly and immediately adjacent and appurtenant thereto, "and reserve them for the use of the United States." The claim thus set up is in conflict with the admissions made in the pleadings, and otherwise in the original suit in this court, in the Supreme Court of the United States; and in the very petition to which this is an amendment, and said petitions after such repeated and formal admissions, are thereby estopped from asserting such claim. The notion that if the United States have ceased to use it as a fortress it reverts to them, and upon the establishment of that fact in this court, it is competent for this court to decree in this case in opposition to the decree of reservation by the Supreme Court for the use of the United States, it submitted to an extravagance which it is not necessary to combat.

And the said attorney contends, that the said fortress, and the said appurtenant territory, originally belonged to Spain in fee, and that they were formally delivered into the possession of the United States, under and in pursuance of the treaty of cession; and he denies that the United States have abandoned Fort St. Marks as a fortress, or have done any act, by which a determination to abandon the same, for such purpose can be inferred, but on the contrary, in the said act of Congress of 1833, referred to in said amended petition, the President of the United States is expressly authorized to make a reservation of lots for fortifications. No disposition of said lots has been made contrary to such reservation, nor has any sale of the lots at St. Marks been made under the Act of Congress of June 30th, 1834.

And the said attorney further saith, that the grant to St. Marks and Tallahassa Railroad Company, referred to in said amended petition, such portions are expressly excluded, as in the opinion of the President of the United States, it might be expedient to preserve for the national defence, or other public use, and in accordance with said reservation, said grant was not located at the immediate confluence of said rivers St. Marks and Wakulla, but some distance above, on the north side of St. Marks river, as by reference to the copy of the survey, and map thereof, herewith filed, marked (X & Y) will fully appear. That although no garrison is at present stationed at said fort, it now is, and ever has been, since it was delivered up in the possession of the United States, and has always been occupied by their troops when in that vicinity. That during the present Indian war, guns have been mounted on the works, by the authority of the United States, and the warehouses therein have always been employed as depositories of the military stores.

And the said attorney denies, that the said fortress was ever given up to the authorities of Florida, so as to deprive the United States of the right to resume the possession at any time when it might be

deemed expedient to occupy it as a fortress, or for any other purpose; but the control permitted to be exercised over said fortress by the Territorial authorities, was merely with a view to the cases, custody, and preservation of the works.

And the said attorney excepts to all the papers filed by said petitioners in this case as documentary evidence, as being *exparte*, irrelevant, lacking authentication, and otherwise illegal, and objects to the use of them as evidence in said case, and denies the truth of said matters of fact in said documents asserted, recited, or inferred, or intended to be inferred therefrom, and requires full and legal proof thereof, and prays that the said petition and amended petition be dismissed, and this honorable court proceed to decide the questions referred to it by the Supreme Court, according to, and in pursuance of the four alternative rules prescribed, without reference to said petition or amended petition, and that the said United States be allowed their costs by reason of the filing of the same in this behalf, wrongfully expended.

CHARLES S. SIBLEY.
Att'y of U. States
for Mid. Dist. of Florida.

And at another day, to wit, on the 20th day of February, 1838, John Carnochan and Peter Mitchell, (two of the complainants in this suit,) appeared pefore the clerk of said court and made affidavit, which is in the following words and figures, to wit:

Affidavit.

SUPERIOR COURT, *Feb'y Term*, 1838.

COLIN MITCHELL & OTHERS, *vs.* THE UNITED STATES. } In Equity.

John Carnochan and Peter Mitchell, two of the petitioners in the case aforesaid, being duly sworn, say, that the admission and disclaim about Fort St. Marks, made by their counsel at the argument of the principal case in the Supreme Court of the United States, at January term, 1835, were without previous consultation, either with these petitioners, or their associates, as far as they know or believed; that it was not objected to at the time on account of the immense interest they had at stake, and their disposition to make almost any sacrifice to obtain a confirmation and final division of their claim; that said admission was made without the knowledge on part of said counsel of its abandonment by the Government as a fort, and of the rights of your petitioners under such abandonment, matters not presented to, and which did not occur, as they believe, to the said council.

JNO. CARNOCHAN.
PETER MITCHEL.

Sworn to before me, this 20th day of February, A. D. 1838.
THOMAS H. DUVAL, *Cl'k.*

And on this day, to wit, on the day and year first above mentioned, on the thirtieth day of June, one thousand eight hundred and thirty-eight, the honorable Thomas Randall, Judge of our said court, filed the following decree in the said clerk's office, which was in the words following, to wit:

Decree.

This cause came on to be heard on the mandate from the Supreme Court of the United States, on the proofs taken in the cause, and on the argument of counsel; and on full consideration of the same, this court is of opinion that the boundaries of the territory ceded by the Indians to Spain, for the purpose of erecting the fortress of St. Marks, cannot now be ascertained; that no evidence can now be obtained to designate the extent of the adjacent lands, which were considered as annexed to said fortress, by the crown of Spain, or the commandant of said post. But this court is of opinion that there is sufficient evidence of the military usage of Spain to determine the extent of land adjacent to forts in Florida, which were usually attached to said forts; that the extent of such reservations was determined by a radius of 1,500 Castilian varas from the salient angles of the covered way, all round the works, or, there being no covered way, from the salient angles of the exterior line of the ditch.

This court doth therefore order, adjudge, and decree, that the lands adjacent to the fortress of St. Marks, to be reserved to the use of the United States, and as part of the public land of the same, shall be ascertained, described, and determined as follows, viz: From the eastern point of that part of the exterior line of the ditch which is in advance of and parallel with the northern face of the bastion, and opposite the shoulder of the same, a line will be drawn, at right angles with that face of the bastion, 1,500 Castilian varas; from the same point of beginning, two other lines, of 1,500 varas in length, will be drawn and extended to points on the margin of the two rivers St. Marks and Waukulla, respectively; from the central one of these three points, lines shall be extended, connecting the terminations of these three radii; and thence extending in the same lines to the centre of the two rivers St. Marks and Waukulla; and all the land comprehended within these lines, and the middle of each river, from their termination to the confluence of the two rivers, below the fort of St. Marks, shall be the land reserved to the use of the United States.

And it is further ordered, adjudged, and decreed, that "vara" to be used in this survey be the "Castilian," or "judicial vara of Spain," 5,000 of which make a league, and are equal in length to 4,635 English yards.

And this court doth further order, adjudge, and decree, that the clerk of this court certify this decree to the surveyor general of Florida, pursuant to law, with directions to survey and lay off the lands

thus reserved to the United States, according to the lines, boundaries, and description thereof in this decree.

THOMAS RANDALL, *Judge.*

30th June, 1838.

Appeal.

IN VACATION, 2d July, 1838.

This day, came *came* the petitioners, by their counsel, Thomas Baltzell, and pray for an appeal to the Supreme Court of the United States from the decree above rendered; which is awarded and allowed accordingly, with directions to the clerk of this court to certify a full and true copy of the record to next term of said Supreme Court.

The following evidence was read in said case, in the argument of the same:

Letter of Attorney General, filed 5th February, 1838.

ATTORNEY GENERAL'S OFFICE, January 16th, 1838.

SIR—

I have had the honor to receive your letter of the 28 ultimo. It appears to me that the claim now made by Colin Mitchell and others to the lands now occupied by and appurtenant to Fort St. Marks, is not only unauthorized in point of form, by the decree of the Supreme Court, and wholly untenable for other reasons, but that the parties are estopped from making it by the proceedings in the principal case, and the express provisions of the final decree.

On inquiring at the war department, I am informed that the fort was evacuated, and its possession transferred to the civil authorities, in May, 1835. This, however, it appears to me, does not vary the case.

I have no authority, by the law organizing this office, to instruct the district attorneys; and I have no doubt you will take such course as will secure to the government full opportunity to defend its rights in the matter.

I am, sir, very respectfully,
Your ob't serv't,
B. F. BUTLER.

C. S. SIBLEY, Esqr.,
United States Attorney, Tallahassee.

Deposition of Ambrose Crane.

Ambrose Crane, a resident of St. Marks, age about forty-five years, collector of the port of St. Marks, states, that he has been a resident about twelve years in said place, and has been acquainted

with the same since the year 1824: that on his first visit to the place, in April, 1824, the only buildings there consisted of the public buildings within the fort, and on the point of land within the junction of the two rivers; there were no private buildings existing at that time; the only inhabitants were the keepers of the fortress, and a family keeping a public house within the fortress: that the keeper of the fortress was Micajah Crupper, placed there by Capt. Burch, of the United States army, in charge of the public buildings: that Crupper staid there about a year, keeping a store; subsequently, Captain Lear occupied the fort, with a company of U. S. troops, until the Indians were removed to their limits below, which occurred in the winter of 1824. After the withdrawal of the U. S. troops, on application of the Governor of Florida, the occupation of the public works was given up by the United States to the territory, and by the secretary of the Territory of Florida, were leased out at public auction to private individuals. After that, it was leased out annually, by a com'r appointed for that purpose by the council of the territory, down to the period of the present Indian war. During the present Indian war, it has been used as a place of deposite for public stores, and occasionally visited and occupied by U. S. troops, on their passage to other posts in the territory. About three years since, deponent, as an officer of the revenue service, by order of the treasury department, took possession of some of the buildings, for the use of that department, and still holds them for that purpose. In the summer of 1827, private individuals commenced erecting buildings for their own use, both inside and out of the ditch, which have been continued down to the present time, and at present number about sixty, and the inhabitants being about one hundred and fifty. Previous to the visit of this deponent, in 1824, the fortress had been dismantled, and the guns had been removed, by the United States. That during the present Indian war, some guns have been placed there by the same authority. With the exception of a temporary occupation for a few weeks, no regular garrison of United States troops have been kept there, since first abandoned; but guards of militia have been placed there by the Governor of Florida, in charge of the public stores. Of the public stores deposited at the place, government paid storage for such part as were deposited in private warehouses, the public warehouses not being sufficient to contain them all. These public buildings were all occupied with these stores, as far as it was safe to deposite them, owing to the character of the stores and nature of the goods. In the year 1828 or 1829, a survey of the position was made, with a view to laying the same off in lots, under the authority of the general government; but the survey consisted only of the outline of the intended town, no lots being actually laid off. A proclamation for the sale of the lots was sent to this deponent by the commissioner of the general land office; for the purpose of circulation. Being shewn the plot of a survey of said town, marked Exhibit N, and filed herewith, this deponent recognizes it to be in general accurate.

Cross-examined by the District Attorney:

Says, as to the private buildings erected in and about the fort, he believes they were erected without any authority from the general government, or any other source, deponent himself having put up buildings on his own authority, while even at the post the U. S. troops occupied the public buildings for barracks and military purposes. At the period deponent first visited, there was a public garden extending from the ditch back about one hundred and fifty yards, enclosed and held as a part of the public property by the keeper of the fortress. There was also a burying yard without and near the ditch, which had been used for burying the dead of the garrison.—There then existed no building without the walls of the fort, and none of the buildings were claimed by private individuals, but all were appurtenant to the fort.

AMBROSE CRANE.

Sworn and subscribed to in open court, and filed, this 19th day of Dec'r, 1837.

T. H. DUVAL, *Clk.*

Depositions of James Gadsden and D. H. Vinton.

COLIN MITCHELL and others
vs.
UNITED STATES. } In Chancery.

Testimony on the part of the United States.

James Gadsden, late an officer of the United States Army, and of the corps of engineers:

First became acquainted with the fortress of St. Marks in the year 1818. At the time it was occupied by the Spanish government, he thinks that there were no houses outside of the fort, unless there were a small building in the garden which was situate without the ditch, and enclosed. As to the military usage of Spaniards respecting portion of land reserved for private buildings contiguous to forts —cannot speak from his own knowledge—knows that when Gen'l Jackson took possession of the fort of St. Marks and other Spanish fortresses in Florida, by a general order dated from Pensacola, he directed that the government officer should take possession of the forts and adjoining grounds, to the extent of point blank range of heavy ordnance, asserting such to be the usage of the Spanish government; in the same order, he prohibited the erecting of any private buildings within the range aforesaid.

Being cross-examined by plaintiff's attorney, says:

That at the time above alluded to, the Spanish garrison consisted of

one commissioned officer and about forty-two men: that the enclosure above spoken of was about fifty yards square, running back from the ditch, used by the officers of the fort as a garden, and as a place to confine stock. There was also a garden within the limits of the ditch, in cultivation, situated at the confluence of the two rivers, which he thinks was used as a hospital garden. Deponent says, that after the surrender of the Territory of Florida to the United States, and after the removal of the Indians to their limits, the fort was dismantled, and the use of it surrendered by the United States to the Territory of Florida: it has not been used since that time, to his own knowledge, by the United States, as a fortress, unless it was this last summer, about which he is not informed. Deponent, speaking as a military man, and as an engineer, says that he does not consider any fortress perfectly defensible that does not command, from its walls, all the approaches to it, to the extent of the point blank range of the largest ordnance: that the fortress of St. Marks is an unfinished work, with a bastion and part of curtain and bomb-proof; its design would seem to have contemplated an extension of the curtain, and a corresponding bastion at its other end, to complete the land defences. No addition has been made to it by the government of the U. S.—There was, when the United States took possession of it, a picket-work connecting the bomb-proof with the southern face of a wall from the bastion, on the Wacaulla, but which has disappeared. The plan marked N, exhibited to me, is, I should judge, a full representation of the work as it now exists. The deponent further states, that he presumes the fort St. Marks was erected by the Spanish government to maintain its dominion, and overawe and keep in subjection its Indian population: as a work, however, for maritime defence, the deponent does not, in his opinion, think it can be embraced within the system now carrying out by the government of the United States; it is too interior, and he believes a better position, more exterior, may be found at or near the mouth of the St. Marks. The coast, however, of east of Pensacola, has not as yet been examined by the board of engineers, who decide these questions; but the deponent understands that the resident officer of that board has given his opinion that the site of the fortress of St. Marks had better be reserved until those examinations can be made.

JAMES GADSDEN.

Sworn to in open court, this 21st day of Decr., 1837.

T. H. DUVAL, *Cl'k.*

Major D. H. Vinton, also examined on behalf of the United States, deposeth and saith, that in the year 1821 or 1822, the Fort of St. Marks was occupied by a company of artillery of the U. S. Army. As to the Spanish usage respecting the reservation of ground, contigious to fortresses, free from private residences, he knows nothing. As to the usage of the U. S. in allowing private buildings to be erected on the glaces of a fortress, I have known them to be specially sanctioned by the Secretary of War, with the understanding

that they are liable to be destroyed. The point-blank of a 32-pounder, as well as he now recollects, is about 850 yards.

D. H. VINTON,
U. S. Army.

1837, Decr. 21st, taken and sworn to in open court.

S. W. D. STONE, *D. C.*

Deposition of Robert Butler.

Robert Butler, Surveyor General of Florida, and formerly an officer of the United States Army, being examined, says:

That at the time General Jackson took the Fort of St. Marks, there were, in his opinion, ordnance there of various calibre, consisting of 18, 12, and 9-pounders, upon the bastion, and on the bomb-proof. He thinks also on a water battery, fronting the bay, there were 2 or 3 24-pdrs. There was at that time, between the water battery and the fort, a pleasure garden, with some fig trees therein, and beyond the ditch were two small pens for cattle, one of which was about half a mile from the fort. The woods appeared to be cleared away for about a mile and a half from the fort, by the authorities, as he understood at the time. The growth between the two rivers north of the fort, consisted generally of pine.

ROBERT BUTLER.

Sworn to in open court, this 22d Decr., 1837.

T. H. DUVAL, *Cl'k.*

Depositions of Achille Murat & Wm. P. Duval.

Testimony on the part of the United States.

Col. Achille Murat, deposeth and saith, that he knows nothing about the usage of the Spanish respecting the portion of ground contigious to forts, generally reserved. Knows the usages of European armies; no building whatever, is permitted to be erected on the *gloeis*. From the salient angles of the covered way, a radius, as far as he recollects, of 1,700 "toile," or 3,400 yards is marked, in which it is not permitted to erect any permanent building or embankment, or stone fences, or to make ditches. 1,700 toiles is the extreme range of the 24-pounder. It is at that distance that the first parallel is made by the besiegers, and any work between that and the place would materially shorten their labors. As these rules are founded on the nature of the arms in usage, and in the method of fortifications adopted by all civilized nations, it is probable that they are common to all. This disability does not effect the property of the land, but attaches to it as a servitude, which lasts only so long as the place is occupied as a fortress.

ACHILLE MURAT.

Sworn to in open court, this 21st day of Decr., 1837.
T. H. DUVAL, *Cl'k.*

Testimony on behalf of United States.

Wm. P. Duval, sworn; the buildings of St. Marks, in 1824, were under the charge of Capt. Burch, an officer of the United States Army. There were no troops there. I applied to Capt. Burch for permission to use and occupy a part of the public buildings there, while engaged in removing the Indians, which he granted me.

Being at that time Governor and Superintendant of Indian Affairs in the Territory of Florida, in 1824. He granted to Capt. M. Crupper, at my request, a house for a store-house, as I had given him license to trade with the Indians, at the same time. That I used a portion of the public buildings for storing the rations, goods, and other presents, intended for the use of the Florida Indians, during the greater part of the year 1824, until about January or February, 1825, when the Indians were removed. That after that time, he did not occupy any of the buildings for any purpose whatever. Does not recollect at what time he obtained permission from the War Department to use and occupy said buildings for the use of the Territory; but such permission was granted before any of the buildings appertaining to the fort, were rented out. The permission at that time obtained, was not revoked while I was Governor.

Examined on part of Pltffs.

The fort was abandoned by the United States, and troops withdrawn in the latter part of 1823, or first part of 1824; he came from Pensacola to St. Marks and there were no troops there. That sometime during the summer of 1824, owing to the hostile indications on the part of the Indians, I applied for a regular force to be sent to St. Marks. That as well as he now recollects, two companies were sent under Capt. Lear, of the 4th regiment of U. States Infantry, to St. Marks, in the summer of 1824, and remained there several months; does not recollect at what time they left.

There was the remains of an old enclosure near the ditch, outside of the fort. It might have been about fifty yards square; there was no cultivation of it in 1824; some of the American garrison were buried there.

WM. P. DUVAL.

Sworn to in open court, this 21st day of Decr., 1837.
T. H. DUVAL, *Cl'k.*

Deposition of James Gadsden.

At the fort of St. Marks, the work being incomplete, there was no glacis proper. The earth from the ditch was thrown exteriorly and may have formed the commencement of a glacis; but which could

not have extended, from the quality of the earth excavated, more than from 30 to 50 feet beyond the ditch. I do not speak positively on this subject, having never measured the ground, and judging altogether from the eye.

JAMES GADSDEN.

Col. Gadsden being examined and sworn, says that the above statement is true.

T. H. DUVAL, *Cl'k.*

H. A. Norris' Report.

FORT ST. MARKS, FLORIDA.

Object of this work.

This fort was doubtless intended to secure to Spain the sovereignty of the adjacent country, or in other words, to prevent any other power from establishing a military post or naval rendezvous upon that part of the coast. It appears that no actual revenue resulted to Spain from the possession of this fort, and the consequent dominion of the circumjacent region. The only traffic carried on here was a trifling one of peltries, the profit of which were the perquisite of the commandant of the fort.

Description.

It consists of a bomb-proof store-house, much higher than the rest of the work. [See Map.] A line of wall connects this with the shoulder *g* of the bastion, which shoulder is circular, and intended to fire along and sweep the ditch. The face *f* of the bastion is calculated to fire upon the ground beyond the ditch, and the fall *d*, commands the river in front of it. The shoulder C of the bastion defends the adjacent line on the left and is itself defended by it, and the same is true of the two lines meeting at *h*. A redoubt *b*, terminates the lines.

Practical effect as a defence.

An enemy approaching from sea would be exposed to the fire of the artillery on the top of the bomb-proof, to that of the redoubt *b*, and to that of the lines on the right of it. Should he descend from the country above, and approach the work on the side *p* or *p'*, he would receive the fire of the bomb-proof and of the face *f* of the bastion. In passing the ditch he would be fired upon from the shoulder *g* of the bastion.

Occupation of the ground of the vicinity.

It does not appear that the Spanish garrison had any use for the

ground beyond the ditch, the space within the work being sufficient for their quarters, stores, and parade ground. The usefulness of the fort would not have been injured by the occupation of the ground northward of the ditch for stores, houses, &c., so long as those buildings did not shelter an enemy, or hinder a free range of the fire from the fort. Indeed, it is common enough to see buildings put up in such vicinities, even when they do interfere with the range of the cannon; the military authorities exercising, in time of danger, the right of removing, destroying, or occupying. And this right to destroy, or occupy has no connection with the *ownership of the soil*, as it would exist in any case where such destruction or occupation was necessary, in spite of the strongest titles. But the exigency passed, the Government or military power retires, and the individual resumes the occupancy. My object is not to speak of this as a question in law, for in that light I should be unable to discuss it. I intend only to shew that there is nothing in the *nature* of *the work* at St. Marks that requires necessarily the appropriation of the soil for a considerable distance around. The artillery of the fort would probably command the ground for half a mile, and not much more, as (from the specimen I saw) it must have been light. The work is altogether of an inferior character.

The forgeoing opinion is made up from a personal examination and survey of the fort in April last, 1837. Accompanying is a sketch drawn from that survey; the whole to the best of my knowledge and belief, correct.

H. ARIEL NORRIS, *Civil Engineer.*

New York, August 28, 1837.

Exhibit A.

Translated from the Recopilacion de Leges de Indias, Madrid, 1755, book 3, title 7, laws 1.

Buildings cannot be erected near Fortresses.

We comand that the ground about fortresses and castles, be clear and unoccupied; and if there be a house or building three hundred paces from the wall, in any direction about it, or one so strong, that even at a greater distance, it may do injury, it shall be demolished, paying from our royal treasury to the owner, the amount of the loss and damage which he may have sustained.

From the same work, book 4, title 7, law 12.

Houses cannot be built within three hundred paces from the walls of the new towns.

We command that no houses be built within the distance of three hundred paces from the walls or stockades of the new towns, it being for the advantage of our service, and for the security and defence of the towns, as provided with respect to castles and fortresses.

Translated by me, Robert Greenhow, translator to the Department of State of the United States, at Washington.

R. GREENHOW.

[See original, page 16.]

Exhibit B.

No. 307. John B. Labatut, in behalf of the heirs of St. Maxent, claims a tract or parcel of land, of two arpens, twelve toises, in front, adjoining the lower limits of the city of N. Orleans, at the distance *from* twenty toises from the barracks, and running parallel with said limits. The facts in the case are as follows, viz:

Mr. Dubreriel was the reputed owner of a plantation of 7 arpents, 18 toises, front, bounded on the lower side by lands of Amslot, and on the upper by the city. After his death, this plantation was sold at auction. in the year 1758, and described as containing 7 arpents and 18 toises in front; and it was also then publicly declared, that a parcel of lands within these limits, on which the principal buildings stood, belonged to the king. (See sale in 1758.)

This declaration was repeated on the third day of setting up the plantation for sale, by Villars Dubreriel, one of the heirs, and tutor to the minors, who said that 2 arpens, twelve toises, on which had been erected the dwelling-house and other buildings of value, belonged to the king, who, out of favour, had permitted his father to occupy the same. This declaration was made with much solemnity before Mr. de Rochemore, Ordomateur-general. (See the declaration.)

Under these circumstances, Mr. La Chaise became the purchaser, and at his death, in the year 1774, it was sold to Madame de Moleon. The papers relative to this sale cannot be found, so that we are ignorant of the manner in which the plantation was, in that instance, described. In the year 1776, it was sold by Madame de Moleon to Col. St. Maxent, and is spoken of as containing 7 arpents, 18 toises, front, and at the same time is bounded as formerly on the lower line, but on the upper by the Gate of France, and the fortificaciones antiguas ò estacadas serviendo de Muralla a esta ciudad. (See the act of sale.) Col. St. Maxent sold this tract of land to Mr. Sigur, in the year 1789, limiting it on the upper side by the city. (See the sale.)

The Baron de Carondelet, in the year 1794, erected fortifications around the town, and intrenched considerably on the land purchased by Sigur of Maxent. Sigur demanded of the Government an indem-

nity, but this was refused, on the grounds that in all French grants a reservation was made of all land necessary for fortifications. (See decree.) Sigur, after failing in this application, filed his petition for redress against the sindies of Maxent; and very voluminous and tardy proceedings obtained from the Spanish tribunal of justice a decree for 25,575 dollars, (see the decree,) which was deducted from the sum he owed for the plantation. In the year 1797, a survey was made for the purpose of ascertaining the lines of the former fortifications, and signed by all the parties interested. This survey gives the position of the Gate of France, and the ancient fortifications and stockades spoken of in the sale of Madame de Moleon. (See the plott.) In 1798, Sigur sold the said plantation to Mr. P. Maraguy, with a reservation of the lands taken by the Baron de Carondelet; and in the same year, Governor Gayose fixed the upper line of the plantation of Mariguy, at the distance of 2 arpents, 12 toises, from the city. (See the plott.)

It is proper further to remark, that lots in Garrison street, running on the line established in 1760, and now contended for, were, in the year 1793, granted by the Baron de Carondelet to divers individuals. These are the most important facts which militate against the claim. On the other hand, in support of the pretensions of the sindic of Maxent, two plans are produced—one executed in the year 1760, and signed by De Rochemore and Governor Kerleree, on which the line of separation between the plantation of Dubreriel, (at that time belonging to La Chaise,) and the city, runs at the distance from the latter of only 20 toises, (see plan;) the other executed in 1769, when Ozeily took possession of the country, on which the line aforesaid is laid down precisely in the same manner. (See plan.)

It further appears, that all the acts of sale speak of the plantation as containing 7 arpents, 18 toises, front, (see the sale;) and it is in evidence, that in the year 1780, the fortifications being abandoned, Colonel St. Maxent was put in possession of the land on which they had been erected, by order of Governor Galvez; that he built several houses on, and continued in the full enjoyment of the same, till he sold the plantation, in the year 1789, to Lawrence Sigur, limiting it by the city.

I have now, with all possible fairness, stated the material facts connected with this claim. Considering, then, the description of this plantation, when purchased by La Chaise in 1758—the declaration of Villars Dubreriel—the limits mentioned in the sale of Madame Moleon to Col. Maxent—the decree of Sigur's application to the Government for indemnity, and that for redress against the sindics of Maxent—the survey of 1797, shewing the situation of the Gate of France, and the old lines of the French fortifications—the grants of lots on Rue Quartier, by the Baron de Carondelet in 1793—the line established by Gayosa in 1798; and finally, a fact omitted to be stated in its proper place, that when the Jesuits' plantation was granted, a space of ground of the same magnitude with that now claimed, was left vacant between said plantation and the city, on the opposite side;—I am of opinion, that the claim of the sindic of Col.

Gilbert Antonio de St. Maxent ought not to be confirmed, and therefore do reject the same.

THOMAS B. ROBERTSON.

I concur in the foregoing statement of facts, but disagree as to the deduction made from them, and the*y* evidence to which they refer. I am of opinion that the land in question forms part of the plantation formerly of Debrieriel, containing 7 arpens, 18 toises, in front, and bounded by the lands of Amelot below, and the limits of the city above, viz: twenty toises from the barracks.

First. Because, many years antecedant to the time of constructing the French fortifications, Dubreriel cultivated the whole extent of the plantation between these limits and his dwelling-house. Sugar houses and other permanent buildings were erected on the land now claimed.

Secondly. Because all the deeds of sale give it the same extent of front.

Thirdly. Because, by a plot*t* of the city made by the order of Rochemore, the ordomateur, and Keleree, the governor, in the year 1760, signed and approved by them, a line of twenty toises from the barracks, and running parallel with the city, is recognised as the limit of the boundary of the city and the lands of Dubreriel.

Fourthly. Because the same boundary is recognised by a plot*t* made by the Count Ozeily, in the year 1769, at the time the province came under the Spanish Government.

Fifthly. Because the fortifications having fallen into disuse in the year 1780, St. Maxent, whose heirs claim under the title of Dubreriel, was put in possession of this land by the order of Governor Galvez.

I cannot perceive that the title to this part of the plantation has been extinguished by any surrender on the part of Dubreriel or his successors, or by any act of the French or Spanish Government. The first and only evidence that this land was reserved by the king, is the declaration of Villars Dubreriel, one of the heirs, and tutor to the minor children in the year 1758, at the time the plantation was exposed to sale, stating that the two arpens, twelve toises, of this plantation were reserved by the king, and that his father had possessed it by permission. Yet the plantation is described, both by the advertisement and adjudication, as having seven arpents, eighteen toises, front, which brings it up to the limits of the city. There is no vestige of the original grant (nor indeed of any grants of the same antiquity,) by which the original limits can be ascertained. But it is scarcely to be presumed that Dubreriel, the father, would have made establishments of such magnitude on lands known to be reserved by the king, when a few paces from it he might have built on his own land, and on a scite equally eligible. At the time this declaration was made, the fortifications were erected; and there is invariably, in all French grants to land in this country, a special reservation that the king shall take any part of the lands granted, for the use of fortifications, when he may deem it necessary. This I

consider the kind of reserve alluded to in the declaration, and rather admits it a part of the original grant, because, if the title was never out of the king, I cannot see how he could have reserved this land, as his reservations are only to be found his grants. I do not consider that any act of the Spanish Government barrs the right of Dubreriel's heirs, or those rightfully claiming under them to this land. Lawrence Sigur, one of the purchasers, being dispossessed in 1794, by the Baron de Carondelet, made application to that Government for indemnity, which was refused, upon the principle that the Spanish Government succeeded to all the rights of the French Government, and that the latter never made indemnity in the like cases—this being one of the conditions of the grant, and upon this principle, damages were awarded against the heirs of St. Maxent. Nor do I think the circumstances of the Baron de Carondelet's granting a small part of this land, can impair the title of Dubreriel, or those who hold under him, if the land previously belonged to them, as his power to grant extended only to vacant land, and all the Spanish grants contain a proviso that the land be vacant. Upon the whole evidence of this case, I am of the opinion that this land was a part of the estate of Dubreriel; that the French Government had a right, in virtue of the reservations in all their grants, to appropriate it to the use of the fortifications. But this was a right only to the use of the soil, whilst the right of property remained in the individual; and as soon as the fortifications were demolished, and cease to be used, the land reverts to the individual, and he has a right to enter upon it.

I. LEWIS.

GENERAL LAND OFFICE.

I do hereby certify that the foregoing is truly copied from the reports of the board of commissioners at New Orleans, now on file in this office.

In testimony whereof, I have hereunto signed my name,
[SEAL.] and caused the seal of this office to be affixed, at the city of Washington, this 22d day of Dec'r, 1835.

ETHAN A. BROWN,
Commissioner of the General Land Office.

Exhibit C.

I, Joseph E. Caro, keeper of the public archives of West Florida, duly qualified and commissioned by the President of the United States of America, do hereby certify that I have carefully examined the records of my office, for confirmations of lands within the district of West Florida, and find that the tracts confirmed to William King, west of Fort St. Michael; the tract confirmed to Roland Clapp, north of Fort St. Bernard; the tract confirmed to Pauline Rivers Caro, east of Fort St. Michael; and the tract confirmed to William

King, east of Fort St. Michael, are situated within musket shot of said forts.

In testimony whereof, I have hereunto set my hand, and [SEAL.] affixed the seal of my office, at the city of Pensacola, this second day of January, in the year of our Lord, 1836.

JOS. E. CARO,
Keeper Public Archives, West Florida.

Exhibit D.

I, Joseph E. Caro, keeper of the public archives of West Florida, duly qualified and commissioned by the President of the United States of America, do hereby certify that I find on the book of record of the late board of commissioners for ascertaining claims and titles to lands within the District of West Florida, now on file in my office, the number of fourteen lots of ground claimed in the village of Barrancas, as will appear by the abstract and Report J, reported to Congress; and that the said lots are within musket shot of Fort St. Carlos de Barrancas.

In testimony whereof, I have hereunto set my hand, and [SEAL.] affixed the seal of my office, at the city of Pensacola, this 1 day of January, in the year of our Lord, 1836.

JOS. E. CARO,
Keeper of the Public Arch's, West Florida.

Exhibit E.

I, Joseph E. Caro, keeper of the public archives of West Florida, duly qualified and commissioned by the President of the United States of America, do hereby certify that I find on the bock of record of the late board of commissioners for ascertaining claims and titles to lands within the District of West Florida, now on file in my office, the land granted to Fernando and Francisco Moreno, near Barrancas, to have been confirmed by the said commissioners, as it appears by the abstract, letter A, of confirmation reported to Congress. And I certify, further, that it was purchased by the Government of the United States, as appears by an act of sale duly recorded in the office of the clerk of the county court.

In testimony whereof, I have hereunto set my hand, and [SEAL.] affixed the seal of my office, at the city of Pensacola, this 1st day of January, in the year of our Lord, 1836.

JOS. E. CARO,
Keeper Public Arch's, West Florida.

Exhibit F.

Francisco and Fernando Moreno, filed a claim to a tract of land near Barrancas, by virtue of the following title papers:

Peticion.

Sõr. Intendente General:

Dr. Fernando y Francisco Moreno anto vs, con el respecto divido exponen; que habiendo servido a su Soberano De Meritorias en el Real Hospital, el primero Cuatro años y el segundo dos, habiendose separado del servicio como a vs suplicamas, creidos de poder segnir algun otro Arte mas economico a nuestra dereniza, à cansa de que sus Pobres Padres no gozo de alto sueldo harapoder sufragar, y como que en esta ciudad Carecemos para tomar ostro giro, y que en virtud de que sus Aonelos Patema fueron nombrados en la Ciudad de Malaga por Pobladores per el marques Del Bao a la Nueva Orleleans, hablandose do Gobernador el Exmo. Señor Dn. Bernardo de Galver, y per causa de sus emfermadades fatterio a su elegada sin haber disfrutado de Cosa alguna ni sus memores, mas que ta Vinda nuestra Abnela el sueldo prevenido por un corto tiempo. A. V. S. haremas presenta que en virtud de quanto elevamos expuesto si nos considera acruduous, el consedemos Territorio en el Canton de Barancas, para formar habitacion siendo el frento desde la misma casa que habita el Padre de los exporentes, hasta la Rabina de la questa de los Barrachos, y de profundidad desde el Sabadero hasta el Inucal de la parte de oha Cuesta. Gracia que espera meresed de la Condad de vs Panzacola treze de marso de mel ochocientos diez.

FERNANDO MORENO.
FRANCISCO MORENO.

Decreto.

Panzagola Quinze de Marso de mil ochientos Diez.

FRASTADO AL SENOR FISCAL DE REAL HACIENDA.
MORALES JUAN MORALES.
VIZENTE YGO RAMOS.

Opinion Fiscal.

El Fiscalde Real Hacienda, ha vista la solicitud de Dn. Fernando y Dn. Francisco Moreno, Hermanos para que se les conseda un terrens en Barrancas haira la Cuestra de los Barrachos, para formar una habitacion y dice *que siempre que no se oponga oho establisimiento a la difenso del puerto* so enal deveran acreditar con certificacion del Sõr. commandante de la provincia, *por hallarse con el frente al a su entrada*, es de paracer el Fiscal que V., le conseda lo que puedan poner en cultivo, no cansandose perficio a tercero, con atenison a sus posibles en consideracion al poco valor de la tierra, y a ser de los pobladores que se trageron de Essaña de cuenta de la Real Hacienda, y a que pedir el Ferreno en las immediaciones de Barrancas, se dirige a permanecer á la Vista y con el auxilio de su Padre que esta empleado alli; pero con obligacion de hacer los desmontes y cum-

pliz lo demas que se previenes, por el reglamento del año 1799. El tribunal sin embargo resolvera lo que sea mas arreglado á justicià que pide el fiscal.—Panzacola seis de April de mil ochocientos diez.

JUAN LOSADA.

Decreto.

Panzacola 9 de April de 1810. Comopide al Señor Fiscal de Real Haciendas y de su vista resulta justificado tambien la Mayonia.

MORALES JUAN MORALES,
VIZENTE YGNACIO RAMOS.

Notificacion.

En oho dia mes y año, notificamos à Dn. Fernando y Dn. Francisco Moreno el anterior decreto.

MORALES.
RAMOS.

Decreto.

Panzacola 18 de April de 1810, Hablandome con el mando militar y politico de esta provincia por aucensia del Senor Gobernador Dn. Vizente Folch, y oida el parceer del Senor Yngeniero comandante asercu de lo que previene el decreto Decreto del Sõr. yntendente superintend'te General subdelegado de esta provincia fha nueve del que rige, por el que con arreglo, a lo pedide por el Senor Fiscal de Real Aacienda en seis de oho mes, cede à Dn. Fernando y Dn. Francisco Moreno el Ferreno que solicitaron por instancia de treze de Marzo ultimo en el territorio de Barancas, con tal que su establicimento no se oponga a la defensa del puerto; se declara que dicha—concesion hecha à fuvon de los menciomados Dn. Fernando y Dn. Francisco Moreno y a juienes considero acrudores y de edad sufficiente y que al efecto me to han presentado, *no perjudica en nadà a la oha defensa aun cuando se establecieze todo, pues que si algum edificio quese perjudicial al Fuerte* és bien savido lo que previene las reales ordinanzas en oho caso. En su consequencia hueden desde luego entrar en el goze y posecion do oha gracia sin que nadie les puceda poner embarazo; pero sus limites han de ser precisamente para que to oho tenga su delida fuersa; una linea tirada al norte desde cinquenta pies masal este del extremo oriental de la poblacion de oho puesto de Barancas, y emperando al pie del cerro hasta caer en el gran—cayn, el que le servira de limite natural hasta elegar al pu del cerro de la cuesta de los Rarrachos, y desde alli signiendo al pie de la tierra alta ó cerro, hasta el punto senatado, sin participar de mirguna parte de la playa in Tierra Basa entre oho cerre y el Mar! y asi se lo podra demarcar el agrimensor general de la provincia, siempre que hor su parte no se le ofresca reparo.

FRANCISCO MAXO DE ST. MAXENT.

Ynforme Agrimensor.

Dn. Vicente Sebastian Pintado Agrimensor general de la Florida occidental; consequente a la America del Señor comandante de la provincia para que tuga efecto la merred que se hace a Dn. Fernando y Dn. Francisco Moreno por decreto del senor yntendente general fechar aneve del que concluge; y designandose en ella con bastante claridad los sinderos naturales y Astificiales que debe tener el terreno; no es de absoluta nezesidad por ahora su Apeo para que los agraciados puedan entrar en posecion, pues solo hay que demarcur la sinea que debepazur a cinguenta pies al este del extremo Oriental de la Poblacion, del pie del Cerro al Bayn grande, la que se terara tuego que se arregledha poblacion y se le dé la forma y figura que debe tener, lo que sera tuego que se haya arreglado la Poblacion de Mobila que debe segnir segun esta mandado al arreglo y a conchirdo de esta Poblacion Capital. Y para intelligencia de los interescedos, y que en el interim no se les siga perfurcio, doy esta in Panzacola á 30 de April, de 1810.

VIZENTE SEBASTIAN PINTADO.

Certificacion.

Es conforme a sus originales que á fin de sazar este testimonio se me puiseron de manifiesto por el interesado agmen los devolize, a que me remito, y en este Papel del Selso Cuarto por haver expresado gozar de fuero; y en cumplimiento de lo mandado por decreto de esto dia del Exmo. Señor Capitan-General, doy el presente, Havana y Agosto 11 de 1821 años.

MANUEL DE AGALA.

Certificacion.

Damos fé gue Dn. Manuel de Agala de ginen el testimonio antecedense aparen antorizada, es Eserivano Publico Mayor de Gobierno segun se titula, fiel, regal, yde confianza, usa y exerre con approbacion y a sus semefantes siempre se les ha dado y da entera fé y credito, y para gue couste donde convenga damos la presente cellado con el de unestro Colegio Habana fha ut supra.

RAMOSE ALVAREZ.
JOSE LORENZO RODRIGUEZ.
MIGUEL MENDEZ.

United States Commercial Agency.

I, John Mountain, viee commercial agent of the United States of America, at the City of Havana, do hereby certify, that Dn. Manguel Ayala, whose signature and notarial signet are affixed to the preceding document, and Dn. Miguel Mendez, Dn. Jose Lorenzo Roderiguez and Dn. Ramon Alvarez, whose respective signatures and notarial signets are affixed to the certificate authenticating the same,

are public notaries of this city, and that to their acts as such, full faith and credit are, and ought to be given, both in and out of court. I also certify that the seal affixed to said certificate, is the seal of the Colledge of Notaries of this city, and deserving full faith and credit. In testimony whereof I have subscribed my name, affixed the seal of my office, at the city of Havana, this 13th day of August, 1821.

(Signed) JOHN MOUNTAIN.

I, Joseph E. Caro, keeper of the public archives of West Florida, duly qualified and commissioned by the President of the United States of America, do hereby certify the foregoing to contain a true and correct copy from the record book, containing the record of Spanish titles, at pages 52 and 53 of said book.

In testimony whereof I have subscribed my name, and
[SEAL.] affixed the seal of my office, at the city of Pensacola, this second day of January, A. D. 1836.

JOSEPH E. CARO,
Keeper of Public Archives, West Florida.

Exhibit H.

Most Excellent President, Governor and Captain-General:

I, Don Colin Mitchell, merchant of this place, expose to your Excellency, with the most profound respect, what follows in consequence of the treaty between our Government and that of the United States of America, about the cession of Florida; I had to sustain a long and expensive law suit, concerning the possession and property of various lands, which those from whom I derived my title had acquired, in conformity with the laws, usages and customs established in those provinces while they belong to Spain, this suit having been finally decided in my favor, by the Supreme Court of the United States, as it appears from the copy of their decisions, which translated in due form from the English language in Spanish, by the public interpreter, Don Louis Payne, the territory surrounding the port of St. Mark's, situated among the lands which belong to me, does still remain in suspense. In the aforesaid decision it is said that is excepted the land included by the Fort of St. Mark's, and that which is directly or indirectly, is adjacent or belongs thereto, which is reserved for the use of the United States, and that by those expressions shall be understood that land which was ceded by the Indian proprietors to the Spanish Crown, in order to build said fort, in the case where the limits of the cession could be ascertained, that if these limits cannot now be ascertained, they shall be considered as annexed and adjacent to the fort, those lands which were considered and held as such by the Spanish Government, or the military commandant at that point, that if it was not found possible even to obtain evidence sufficient to establish the adjacent lands to said fort in the manner expressed, then to comprehend in this exception as much land as is generally assigned

by the Spanish Government for military uses of the forts in Florida and the neighboring colonies; and finally, that if it was not possible to procure military usage, then that a line should be drawn from the point of junction of the rivers St. Mark's and Wakulla, to the middle of the St. Mark's river below the junction; that from there a line of three miles, in straight line, without taking in account the bends of said rivers, shall be drawn running up the middle of said rivers; and that the land contained within a straight line drawn in such manner as to leave one of the points of termination in each of the rivers, at the end of the said three miles, running up each river; and the two lines drawn in the aforesaid manner will be, and for the present is, declared to be the reserved territory, as adjacent and belonging to the Fort of St. Mark's, and as such, is reserved for the use of the United States. And as I find myself in the necessity to show to the Supreme Court of the United States what is adjacent territory, according to our laws and military usages, is considered to belong to that fort. I apply for proof to your Excellency, praying, that taking for presented disposing part of the sentence to which I have restrained myself, you would be pleased to order that the royal corps of engineers, or any body else to whom it belongs, would put in continuation of this petition, the competant certificae or declaration necessary to show what adjacent lands is according to our laws and military usages, to belong to the Fort of St. Marks, situated in Florida, and on lands which have been declared by said decision, to be my property, and that, that done, I may be furnished with the evidence I require, in order to sustain my rights in the tribunals of the United States of America. It is a grace and justice I expect from the known equity of your Excellency.

Havana, Sept. 25, 1835.

As Attorney for Don Colin Mitchell,
(Signed) ANTONIO GUTERREZ.

In the margin the following decision:

Havana, Nov. 17, 1835. Having sent for information, the present petition of Don Colin Mitchell, to the most Excellent director of engineers, he has answered what follows:

Most Excellent Sir: I have examined attentively the petition of Don Colin Mitchell, and the copy of the decision pronounced by the Supreme Court of the United States, which your Excellency were pleased to send me with your official letter of the first instant, in order that I should report on the subject, as I am about to do, referring myself to the evidence which is to be found in the archives of the director, sub-inspection of the royal corps of engineers, of which I have charge, and to which East Florida was annexed while it belonged to the Crown of Castille, and until the last treaty of cessions made to the Anglo-Americans. The Castle of St. Mark's, of Apalachee, is situated on the peninsular or tongne of land formed by the river of that name, and that of northwest or Wakulla, according to the decision 195 Castilian yards, (varas,) from the most meridional

point of the peninsular, and following the left bank of the northwest river, begins on the north or land side of a bulwark whose curtain on that front which terminates on the right bank of the St. Mark's river, at 230 varas from the aforesaid peninsular, in which, adding the irregular width of the ditch from eight to ten varas, consists the whole fortification of the north side of the aforesaid fort, and on the south side it has a fort or fortification, without ditch or any other kind of work following, a piece of land in which was enclosed a garden, which was always kept there by the commandants of the Castle of Apalachee. All what is said above being conform to the plans and profiles sent to this direction, sub-inspection on the 14th August, 1804, the commandant of engineers of West Florida, Lieutenant Colonel of that corps, Don Juan Meria Pichet, your Excellency knows that our military laws, as contained in the royal ordinances, that the lands necessary for fortifications, (whose limits are those of the esplanade or glacis of the covered way,) when belonged to individuals, are bought from them at a just appraisement; and that on the plans already established, a radius of 1,500 *Castillian varas* is measured from the salient angles of the covered way, all around the said fortification, in which it is prohibited to build houses, or re-build those already in existence, but leaving the owners in full possession of their direct and useful domain of said lands, permitting only the construction of such edifices of wood as are necessary for their cultivation, and of course easily destroyed in case of a siege. By this means, conciliating as much as possible the advantage produced to the public interest by fortresses, shewing due respect for the sacred rights of property, for it was necessary to encounter this, or else governments would have to support the immense expense which would ultimately result to the people from the large sums necessary for the indemnification for the lands embraced in the aforesaid radius of 1,500 varas, which is retained by the military laws based in the examples which the history of the attacks and defence of fortresses offer us, by the most fatal results caused to said fortifications, by the erection of houses in the prohibited extent.

From what I have exposed, and from the evidence I have under my eyes, it results that of St. Marks de Apallachee has not occupied, nor ought to have occupied more extension of land than that comprised from the line of the ditch, on the north point, already descibed, running from the west bank of the northwest river, to the right bank of the St. Marks river, to the southermost point, formed by the confluence of said rivers, being what I have said, as much as I can, or must report, in order to comply with the official letter of your Excellency, to which I answer, returning the aforesaid memorial and copy of the decision, which I have added to this petition, for the object which may suit the interested party.

(Signed,) FACON.

TALLAHASSEE, Dec. 24th, 1837.

I certify that the above is a true translation of the original document.

ACHILLE MARAT.

Exhibit J.

No. 14. Elisha Winter claims a lot of ground situated between the city of New Orleans and the suburb St. Mary, containing one hundred feet in front, by six hundred feet in depth. It appears that in the year 1791, the claimants obtained a regular order from the King of Spain, for this land, for the purpose of erecting a rope-walk, and in the same year obtained a grant from Governor Mire, persuant to the royal order, that in or about the year 1793, by the order of the Baron de Carondelet, part of this land was retrenched the whole length of the side next to the fortifications, containing about eight hundred and forty-two superficial toises, to be used as a curtine to the same, and the claimant was ordered and compelled to demolish his buildings, which were erected thereon. The claimant remonstrated against the injustice of this order, and the Governor ultimately granted him as an indemnity an additional quantity of ground, in the rear of his rope-walk, making in quantity somewhat more than the ground retrenched, but not equal in point of value, nor was its value equal at the time, to the value of the buidings demolished. The only difficulty appears to be, whether the grant of the additional quantity of ground adjoining the rope-walk was given and accepted, not only as an indemnity for the buildings demolished, and the consequent losses and inconveniences, but also as an extinguishment of all right and title in the claimant to the land retrenched from him. It seems to have been the practice of the Spanish Government in this country, when private property has been invaded by the law of public necessity, to indemnify the individual to the extent of his sacrifice. In this case, the indemnity given was not at the time equivalent to the buildings demolished, nor to the ground retrenched. This right of the Spanish Government is founded upon public necessity, and the principles which apply to it, we consider are precisely analogous with those that apply to the laying out of public highways, &c., in which case the individual is indemnified for the privation and resulting inconveniencies only, and the land reverts to him when it ceases to be a public highway. The Spanish Government at the time seemed to consider the indemnity as extending not even to the privation of the ground, but merely to the demolition of the buildings, for the surveyor general, who, by the order of the Governor, surveyed for the claimant, the ground which was given as an indemnity, states in his proces-verbal of survey (upon which the patent isssed,) "land surveyed for the claimant as an indemnity for demolishing his buildings." The fortifications having since been razed, we are of opinion, that the land reverts to the claimant, and do accordingly confirm him in this title.

GENERAL LAND OFFICE.

I hereby certify that foregoing is a true copy of the report upon the claim of Elisha Winter, No. 14, as entered upon pages 133, 134 and 135, of volume No. 2, of the reports of the commissioners upon claims,

in the then eastern district of the Territory of Orleans, now State of Louisiana, now on file in this office.

In testimony whereof, I have hereunto signed my name, [SEAL.] and caused the seal of this office to be affixed at the city of Washington, the 19th day of February, 1836.

EPHAN A. BROWN,
Commissioner of the General Land Office.

Exhibit M.

SEN'R GOVERNOR:

Don Juan Leonardy, an inhabitant of this city, with all due respect, represents to your Excellency, that outside the exterior angle of the fortification, (Linea de Ornabeque) south of the plantation of Juan Villalonga, there is a piece of vacant land, consising of six acres, which owing to its having been neglected and uncultivated for many years past, has not been appropriated to any person, nor does any one claim it. Of this land your petitioner has need for the support of his family. Submissively, therefore, he begs your Excellency, that he will be pleased to grant him this land, for the object stated, and this favor your petitioner expects from your Excellency's kindness.

JUAN LEONARDY.

FLORIDA, March 1st, 1803.

Referred to the chief engineer.

WHITE.

Having in view the petition and also a due regard to a former decree, I represent to your Excellency that the unconditional cession of the land solicited by the petitioner, is directly opposed to the defence of this post. But in order to unite its better defence with an increased agricultural produce, my opinion is that your Excellency will do well to concede the land to the petitioner, under the express and sole condition of its being cultivated only in plants of low growth, and enclosed with a low fence, (de baya,) and that he shall by no means pursue a different cultivation, nor raise any structure of whatever kind or materials. This is what my duty required me to represent to your Excellency, who will determine in the matter according to his pleasure.

NICHOLAS BAZEILA.

ST. AUGUSTINE, Feb'y 3rd, 1803.

ST. AUGUSTINE, Feb'y 3, 1803.

I concede to the petitioner the lands which he solicits, without prejudice of any other, and with the express condition that it is to be cultivated only with plants of low growth, to be enclosed with a low

fence, (de baya,) and that no structure of whatever kind be put or raised upon it.

WHITE.

Duly certified.

PIERRA.

I, Antonio Alvarez, keeper of the public archives of East Florida, do hereby certify the foregoing to be a true copy, and correct copy of the original on file in my office.

Witness my hand and seal of office, at the city of St. Augustine, Territory of Florida, this seventh day of January A. D. one thousand eight hundred and thirty-six.

ANTONIO ALVAREZ, *K. P. A.*

F. W. HATCH,
Trans'r Fr. and Sp., H. Reps. and Land Office.

Exhibit N.

SEN'R GOVERNOR:

Miguel Villalonga, an inhabitant of this city, with great respect represents to your Excellency, that in a place called Macaviz, bounded on the north and west by three acres of land, belonging to the petitioner, there are three other vacant acres of land, which as they have no owner, as is shown by the corresponding document, belong to his Majesty; of this land your petitioner has need for his support, and he therefore humbly begs your Excellency, that he will condescend to grant him these three acres, which are vacant in the said place, and bounded on the north by the aforesaid acres, which for a long time have belonged to your petitioner, and on the west, by other ten, which were conceded to him by the former government. This is a favor, which from the known goodness of your Excellency, he expects.

At the request of the petitioner.

JOSE DE SAVALA.

FLORIDA, Nov'r 21st, 1801.

ST. AUGUSTINE, Nov'r 21st, 1801.

Referred to the chief engineer.

WHITE.

SEN'R GOVERNOR:

As the lands of Micariz are within the distance of 1,500 yards of the castle, they cannot be cultivated in corn, nor can ditch, nor thorn-hedge fences be allowed, and only plants of low growth and vegetables of all descriptions be permitted to be cultvaited, whereby the

ground may be kept clean, and free from its natural growth and production; but for the security of the produce of the land put under cultivation, it may be allowed the grantees to erect simple post and rail fences, which may be sufficient to prevent animals from breaking in and causing damage; on these conditions, your Excellency can, if he please, concede to the petitioner the three acres of land, which he begs may be added to the ten acres, which your Exe'y lately granted him. I make this communication to your Excellency, in compliance with his former order.

PEDRO DIARY BERIO.

ST. AUGUSTINE, Nov'r 23rd, 1801.

ST. AUGUSTINE, Nov'r 24, 1801.

The piece of ground which the petitioner solicits, is granted to him without prejudice of any other party having just claims, and with the understanding that he must not cultivate it in corn, nor any other plants of high growth, nor even form enclosures by high ditching or thorn-hedges; but he may put up a post fence with long rails, placed at equal distances one from the other, in order to protect the crops against the cattle.

WHITE.

Duly certified.

PIERRA.

I, Antono Alvarez, keeper of the public archives of East Florida, do hereby certify the foregoing to be a true and correct copy of the original on file in my office.

Witness my hand, and seal of office, at the city of St. Au-
[SEAL.] gustine, Territory of Florida, this eighth day of January, A. D. one thousand eight hundred and thirty-six.

ANTONIO ALVAREZ, *K. P. A.*

F. W. HATCH,
Trans'r Fr. and Sp., H. Rep's and L. Office.

Exhibit O.

To GENERAL CHARLES GRATIOT,
Chief Engineer U. S.

Sir:—In compliance with your order of the 20th March last, I visited St. Marks and made an examination at that point, in order to ascertain "what portion of land ought to be reserved for defence, or other public works; whether the site of the old fort is the most favorable for the defence of the place, or what other position could be more advantageously taken for that purpose." I now have the honor to report, that in my opinion, the point of land formed by the confluence of the Wacullo and St. Marks rivers, is the most favorable position for a fort or battery, intended for the defence, either against an ap-

proach by water or land; because the said point is surrounded on all sides by marshes impracticable to a besieging force; because vessels drawing only ten feet water, at the highest tides, can approach it from the sea; because the point can be defended at a very small cost comparable to any other point below it; because it could keep up a communication with the country in its rear. Other positions certainly could be selected, but possessing fewer advantages, and requiring more expensive structures for defence. A glance at the enclosed sketch, will exhibit at once the excellent position of the present site of Fort St. Marks for defence. The opinion, however, is formed, that St. Marks river will not for many years at least be considered of sufficient importance to be defended, and if the department coincides in this opinion, the question will rest with the department, whether it will be necessary for the public interests to reserve the site of St. Marks for purposes of defence. I do not perceive that the site would be required for any other public works, should it not be reserved for works of defence, and the adjacent country be granted and sold by the United States, for the location of a town, railroad, &c. It would be necessary, perhaps, to reserve so much of the said point, as is now occupied by the walls of the old fort, and the attached buildings for a custom-house, stores, &c. There is an excellent bomb-proof building, containing four large and commodious rooms that would serve admirably for a custom-house store. It would require an additional roof of wood or of masonary, and some new doors and windows, to render it in good order. The other buildings could be repaired at a small expense, affording sufficient accommodation for a custom-house and offices. The reservation for the purposes of a custom-house, would be consequent upon St. Marks becoming a port of entry. The extreme unhealthiness of the position, presents strong obstacles to it becoming more than a depot for the reception and delivery of goods, to be conveyed to and from some town further in the interior, and in a more healthy location. The opinion is formed, that if a rail is constructed from Tallahassee, to St. Marks, that the former will be the place of trade, and the latter will only be a depot, for the reception of supplies and the shipment of produce. By means of the railroad, (the distance being only twenty three miles,) the two points would be brought very close together; so that the business of trade, as well as the collection of the customs, could be transacted with every facility at Tallahassee. In conclusion, I would recommend that if the government determine to abandon Fort St. Marks and dependencies, as a position of defence, a grant should be made to the railroad company, of ten acres of land, at the confluence of the St. Marks and Waculla rivers, reserving all that portion of it embraced by the walls of the old fort, and by all the public buildings now standing on the site, reserving also the right of way to the said reservation; the limits of this reservation to be defined by commencing at a point on the Waculla river, where the walls of the fort touch the same river, and following the foot of the said walls, to the eastern corner of the bomb-proof building, following along that building at its eastern end and southern front to its western

corner, and thence following a west line to the river Wakulla. This reservation to be held by the United States, until the effects of the railroad are ascertained; when, should it be found necessary to occupy the said reservation, for the use of the custom-house, &c., the same to remain in possession of the United States, and a quantity of land, equal to the quantity of the reservation, to be given to the railroad company, in order to make up the full compliment of the grant made by Congress, of ten acres of land. Should it be decided on the contrary, to establish a port of entry at some more healthy, and equally convenient point, as at Tallahassee, then the said reservation to be given up to the railroad company.

I have the honor to be, sir,
Very respectfully, your ob't serv't,
(Signed) WM. H. CHASE, (*Capt.*)
PENSACOLA, April 19, 1835.

Exhibit P.

ENGINEER DEPARTMENT,
WASHINGTON, *May* 5, 1835.

Capt. W. H. CHASE,
Corps of Engineers, Pensacola, Fla.

SIR: Your letter of the 19 ult. respecting your views as to what portion of land ought to be reserved for defence or other public works at the junction of the St. Marks and Wakulla rivers, has been laid before the Secretary of War. He directs that you proceed to St. Marks without loss of time, and lay off the ground occupied by the site of the old fort, and all the buildings mentioned in your report, allowing on the outside of the walls sufficient space for an exterior ditch, to which you will add one hundred feet. The space comprehended within the line thus described, and the St. Marks and Wakulla rivers at their junction, together with a right of way will be reserved for the United States. You will also lay off, exterior to this reserve, ten acres of land, to be granted to the Tallahassee Railroad Company, in compliance with the law of Congress, a copy of which was furnished you, with your instructions of the 20th March last. Upon the receipt of this communication you will notify the President and Board of Directors of the railroad, of the time that you will reach St. Marks to carry into effect the instructions now given.

I have the honor to be, sir,
Your obt. servt.
By order: R. E. LEE.
Lt. and Alo. Cp. Eng.

MIDDLE DISTRICT OF FLORIDA, *Leon County, ss.*

I, Richard G. Wellford, clerk of the superior court of the middle district of Florida, in and for the county of Leon, do hereby certify